

Richard L. Crabtree, ABA 7510063
R. Crabtree, APC
3330 Arctic Blvd., Suite 201
Anchorage, Alaska, 99503
Tel: 907-222-4300 / Fax: 907-222-4399
Toll Free (844) 907-4317

Attorneys for McNichols Company

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, for the)
use and benefit of McNichols Company,)
an Ohio Corporation,)
Plaintiff,)

vs.)

BRISTOL GENERAL CONTRACTORS)
LLC, An Alaska Limited Liability)
Company, LIBERTY MUTUAL)
INSURANCE COMPANY,)
BOND NO. 023023749, a Massachusetts)
Corporation, CCS DESIGN BUILD)
GROUP, LLC, An Alaska Limited Liability)
Company and WESTERN SURETY)
COMPANY, BOND NO. 71242519,)

Defendants,)

MILLER ACT COMPLAINT

Case No.

COMES NOW Plaintiff the United States of America, for the use and benefit of
McNichols Company and alleges as follows:

PARTIES

1. The Use Plaintiff, McNichols Company ("McNichols") was and is an Ohio
Corporation, has paid all necessary fees and penalties due and filed all reports last due and is
in all ways qualified to bring and maintain this action. McNichols does not do business in the
State of Alaska as defined in AS 10.06.718 and is not required to obtain a certificate of
authority to do so in order to bring and maintain the instant action.

MILLER ACT COMPLAINT

2. Defendant Bristol General Contractors, LLC (Bristol) was and is an Alaska limited liability company.

3. Defendant Liberty Mutual Insurance Company ("Liberty Mutual") is upon information and belief a Massachusetts corporation engaged in the compensated surety business.

4. Defendant CCS Design Build Group ("Design Build") is an Alaska limited liability company.

5. Defendant Western Surety Company ("Western Surety") is upon information and belief a South Dakota Corporation engaged in, among other activities, the issuance of contractors' bonds in the State of Alaska.

JURISDICTION

6. The court possesses federal question jurisdiction pursuant to 28 U.S.C. § 1331 over Use Plaintiff's cause of action against Bristol and Liberty Mutual conferred by the "Miller Act" 40 U.S.C. §§ 3131, 3134.

7. The Court's jurisdiction over Use Plaintiff's cause of action against Design Build is based upon this Court's Supplemental Jurisdiction, 28 U.S.C. § 1367, because the claims against Design Build are so related to claims in the action within this Court's original jurisdiction under the Miller Act that they form part of the same case or controversy under Article III of the United States Constitution.

VENUE

8. Venue is proper in this court under 40 U.S.C. §3133 because the work out of which this dispute rises was performed on Joint Base Elmendorf Richardson, State of Alaska ("JBER")

9. The substantive law of the State of Alaska applies because parties formed their contracts in that State and the materials in question were provided to or were intended for the Buckner Physical Fitness Expansion project located on JBER.

FACTUAL ALLEGATIONS

10. This dispute arises out of a federal government construction project more specifically identified as BUCKNER PHYSICAL FITNESS EXPANSION (Contract No. W911KB-13-C-0002) ("Buckner Expansion.")

11. The Federal Government contracted with Bristol for the Buckner Expansion.

12. On or about October 29, 2014, Bristol subcontracted with Design Build to provide certain materials and services for the Buckner Expansion. On or about October 29, 2014 Design Build contracted with McNichols to provide certain metal and fiberglass materials for the Buckner Expansion.

13. Liberty Mutual, as surety, furnished to the United States of America a joint and several payment bond dated December 4, 2013, in the penal sum of \$21,813,389 conditioned upon the timely and proper payment to all persons supplying labor and material in the prosecution of the project described herein and making it and Bristol jointly and severally liable to such persons to the full amount of the penal sum of the payment bond.

14. Western Surety issued a contractor's bond, No. 71292519 in the amount of \$10,000, to Design Build on March 9, 2012, pursuant to AS 08.18.71(b) to cover claims for material among other obligations of the contractor.

15. McNichols completed its work in compliance with the requirements of the contract documents.

16. Attached hereto as Exhibit "1" and incorporated herein by this referenced is a copy of Design Build's credit application setting for the terms pursuant to which Design Build purchased materials from it for the Buckner Expansion project.

17. Attached hereto as Exhibit "2" and incorporated herein by this reference are true and correct copies of McNichol's invoices for the materials provided to Design Build at its request.

18. Attached hereto as Exhibit "3" and incorporated herein by this reference is a true and correct copy of the Miller Act Notice of Claim on Payment Bond provided to Bristol General Contractors, LLC, Liberty Mutual Company, CCS Design Build Group LLC, and the Federal Government concerning McNichol's claims.

19. CCS Design Build Group LLC has failed and refused to pay the McNichol's invoices.

CAUSES OF ACTION

COUNT I-PAYMENT BOND CLAIM

20. More than ninety days but less than one year has expired from the last date upon which the Use Plaintiff McNichols furnished materials on the above project.

21. By reason of the failure of the Defendant Design Build and or Liberty Mutual to pay Use Plaintiff McNichols the sum of \$11,807.25 justly due and owing to it and in accordance with the provisions of the Payment Bond identified as Exhibit "3" hereto and the Miller Act, Defendant Design Build and Defendant Liberty Mutual as surety, have become indebted, jointly and severally, to the Use Plaintiff McNichols in the sum of \$11,807.25.

22. Use Plaintiff McNichols has conformed and complied with all of conditions required of it under the Payment Bond, Exhibit "3."

23. Use Plaintiff McNichols has conformed and complied with all of conditions required of it under the Miller Act.

COUNT II-BREACH OF CONTRACT CLAIM

24. Design Build breach its contract with Use Plaintiff McNichols by failing to pay the full amount due for the goods it received.

25. Use Plaintiff McNichols is entitled to damages for this breach of contract in an amount to be proven at the time of trial.

COUNT III-QUANTUM MERUIT CLAIM

26. Defendant Design Build is liable in *quantum meruit* for the value of the goods it ordered and received from Use Plaintiff McNichols.

COUNT IV-CONTRACTOR'S BOND CLAIM

27. Defendant The Western Surety's Contractor's Bond issued to Design Build is subject to claims for materials provided to design build and for breaches of contract by Design Build to the penal amount of said bond. Defendant Design Build has failed to pay for materials it purchased from Use Plaintiff McNichols.

28. Defendant Western Surety is liable on the contractor's bond it issued for Design Build to the extent said Bond has not been exonerated, which on information and belief is the sum of \$10,000.00.

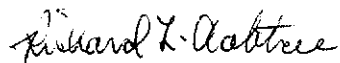
PRAYER FOR RELIEF

WHEREFORE, The United States of America, for the use and benefit of McNichol's Company, prays for relief as follows:

1. For judgments against Defendant Bristol General Contractors, LLC., CCS Design Build LLC, and Liberty Mutual Insurance Company's Bond No. 023023749, jointly and severally in the sum of \$11,807.25;
2. For judgment against Western Surety in the sum of \$10,000, jointly and severally with the sums awarded against CCS Design Build LLC, and Liberty Mutual Insurance Company's Bond No. 023023749,
3. For an award of pre and post judgment interest or service charges in the maximum amount allowed by law;
4. For an award of attorneys' fees and costs incurred herein, including without limitation on appeal and in the course of collection; and
5. For such other and further relief as may appear just and equitable in the premises.

Respectfully submitted this 19th day of November, 2015.

R. Crabtree, APC
Attorneys for the Use Plaintiff
McNichols Company



Richard L. Crabtree
Alaska Bar Association No. 7510063
3330 Arctic Blvd., Suite 201
Anchorage, AK 99503
Phone 907-222-4300
Fax: 907-222-4399
E-mail: rcrabtree@rcalaska.com